

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARSHALL DONELL FORREST, III,

Defendant-Appellant.

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UNPUBLISHED

September 26, 2000

No. 218217

Berrien Circuit Court

LC No. 98-490001-FC

Before: Doctoroff, P.J., and Holbrook, Jr. and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree felony-murder, MCL 750.316(1)(b); MSA 28.548(1)(2), second-degree murder, MCL 750.317; MSA 28.549, and first-degree home invasion, MCL 750.110a(2); MSA 28.305(2). He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to life imprisonment for each conviction. We affirm defendant's conviction and sentence for first-degree felony-murder, but vacate his convictions and sentences for second-degree murder and first-degree home invasion.

Defendant first argues that the evidence was insufficient to support his conviction of first-degree home invasion because the evidence did not establish that he had a felonious intent at the time he entered the victim's residence. He further contends that, absent sufficient evidence that he was guilty of first-degree home invasion, he could not be convicted of first-degree felony-murder, predicated on his commission of a first-degree home invasion offense. We disagree.

When reviewing the sufficiency of the evidence, this Court considers the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences that arise therefrom may be sufficient to prove the elements of an offense. *People v Noble*, 238 Mich App 647, 655; 608 NW2d 123 (1999).

The first-degree home invasion statute does not require that there be a "breaking." Rather, entering without permission with the intent to commit a felony is sufficient to support a conviction for

first-degree home invasion. MCL 750.110a(2); MSA 28.305(a)(2); *People v Warren*, 228 Mich App 336, 347-348; 578 NW2d 692 (1998), affirmed in part and reversed in part on other grounds, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 111745, issued 7/11/2000). Here, the prosecutor presented evidence that defendant and a codefendant, Joe Nelson, entered the victim's home, whereupon the victim was brutally assaulted, possibly sexually assaulted, and then killed. Numerous items of personal property were stolen. Although defendant contends that he entered the house only after being waved inside by Nelson, who he claims had entered ahead of time, the evidence was sufficient to establish that Nelson did not have permission to enter the premises, and it is axiomatic that permission cannot be granted by one who himself enters a home without permission. In any event, the circumstances surrounding the offense and defendant's involvement with the stolen property after the offense negate defendant's suggestion that he decided to help remove the victim's property only after entering the premises. Rather, defendant was identified by the purchasers of the stolen property, who claimed that defendant dominated the sale of the property. Defendant led the police to the place where he had deserted the victim's vehicle and thrown her license plates, and his fingerprint was found on the victim's wallet, which was recovered from the victim's abandoned, stolen car. Defendant also led the police to the location where the victim's other property was recovered. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant entered the victim's premises with a felonious intent and that the elements of first-degree home invasion were proven beyond a reasonable doubt. Therefore, defendant's claim that his first-degree felony-murder conviction must be vacated due to insufficient evidence fails.

However, the prosecution concedes, and we agree, that double jeopardy principles require that defendant's convictions of second-degree murder, stemming from the death of the same individual, and first-degree home invasion, must be vacated. *People v Garcia*, 448 Mich 442, 471-472; 531 NW2d 683 (1995), citing *People v Allen*, 390 Mich 383; 212 NW2d 21 (1973); *People v Jankowski*, 408 Mich 79, 90-91; 289 NW2d 674 (1980); *People v Bigelow*, 229 Mich App 218, 221-222; 581 NW2d 744 (1998).

Finally, defendant argues that he is entitled to a new trial because of newly discovered evidence, that evidence being codefendant Nelson's post-conviction confession claiming sole responsibility for the victim's murder. However, defendant has not briefed the merits of this claim, and instead merely refers to his motion to remand, which was denied by this Court in an unpublished order, dated February 25, 2000. A defendant waives an issue by failing to address it in his brief. *People v Kean*, 204 Mich App 533, 536; 516 NW2d 128 (1994). In any event, we reject defendant's suggestion that codefendant Nelson's confession properly may be considered "newly discovered." *United States v Glover*, 21 F3d 133 (CA 6, 1994); *United States v O'Dell*, 805 F2d 637, 640 (CA 6, 1986); see also *United States v Lockett*, 919 F2d 585, 591 (CA 9, 1990); *United States v DiBernardo*, 880 F2d 1216, 1224-25 (CA 11, 1989). Accordingly, we find no merit in this issue.

Defendant's conviction for first-degree felony-murder is affirmed. His convictions for second-degree murder and first-degree home invasion are both vacated.

/s/ Martin M. Doctoroff  
/s/ Donald E. Holbrook, Jr.  
/s/ Michael R. Smolenski